

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

Service Tax Appeal No. 681 of 2011

[Arising out OIA-143/2011/COMMR-A-/RBT/RAJ passed by Commissioner of Service Tax-RAJKOT]

M/s. Iilm Business School

.....Appellant

B-ii/61, Mohan Co Operative Industrial Estate,
Mathura Road,
NEW DELHI, 110044.

VERSUS

C.C.E. & S.T. Rajkot

.....Respondent

CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

APPEARANCE:

None appeared for the Appellant

Shri K. J. Kinariwala, Authorised representative for the Respondent

CORAM:

**HON'BLE PRESIDENT JUSTICE DILIP GUPTA
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL ORDER NO. A/ 12227 /2019

DATE OF HEARING: 03.10.2019
DATE OF DECISION: 21.11.2019

RAJU

This appeal has been filed by IILM against order demand of service tax, interest and imposition of penalty under Section 77 and 78 of the Finance Act, 1994.

1.1 None appeared on behalf of the appellant despite notice. The matter was adjourned five times earlier; therefore, the matter is taken up for final disposal.

2 The facts of the case are that the appellants are engaged in imparting courses such as MBA, PGP programme (industry integrated). A Show cause notice was issued to the appellant demanding service tax on this activity under the head of 'Commercial Coaching and Training'. The demand was confirmed and penalty was imposed. The said order was upheld by Commissioner (Appeals) and hence this appeal. From the grounds of appeal, it is seen that the IILM Business School was set up by

International School of Learning in Management trust a Public Charitable Trust and it was an approved center of Eastern Institute of Integrated Learning in Management University Sikkim which in turn is approved by University Grants Commissioner. It was also stated that Eastern Institute of Integrated Learning in Management University Sikkim has full authority and legal sanction to grant degrees and diplomas as per section 22 of the said Act to its student upon successful completion of the course. The appellant got approval from the University vide its letter dated 12.02.2009 to be its knowledge hub and to enrol students for the management classes i.e. M.B.A. All the students of the appellant were enrolled for getting degree/diploma/certificate from a University duly recognized under the law, after qualifying the exams. All the enrolled students were required to complete the course as prescribed by the university and have to adhere to the rules and regulations such as minimum attendance, eligibility etc as prescribed by the university so as to be able to appear for the examinations conducted by the university.

2.1 It is seen that the original adjudicating authority has confirmed the demand on the ground that noticee has been authorized by Eastern Institute of Integrated Learning in Management as knowledge hub of EIILM University Sikkim. The order in original observes that the appellants are not granting any degree recognized by law but are acting as a knowledge hub for EIILM University set up by State Government of Sikkim and which is approved by University Grant Commissioner. The order in appeal also upholds the order in original on the same ground.

2.2 The appellant have also contended that they are entitled to Notification No. 10/2003 dated 20.06.2003 on the ground that they are providing Coaching or Training confirming and essential part of course curriculum of any other institute or establishment leading to issuance of any certificate or diploma or degree or education qualification recognized by law.

3. Learned Authorized Representative relies on the decision of Hon'ble High Court, State of Telangana in case of NRI Academy Guntur 2019 20 GSTL 23 (AP).

4. We have considered rival submissions. We find that the appellants themselves are not recognized by law to grant any degree and therefore, the service provided by the appellant qualifies as Commercial Coaching and Training. Notification 10/2003 reads as under:-

"Commercial training or coaching centre providing commercial training or coaching of specified type exempted

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force, to any person, from the whole of the service tax leviable thereon under sub-section (2) of section 66 of the said Act :

Provided that this exemption shall not be applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre.

2. This notification shall come into force on the 1st day of July, 2003."

It is seen that to claim the Notification benefit, the appellant have to establish that the charge for such services are not paid by the service recipient to the service provider. In the instant case, the order in original as well as the impugned order record that the payment has been made to the appellants by the service recipient and thus, the benefit of Notification 10/2003-ST is not available.

5. In similar circumstances Larger Bench of Tribunal in the case of Sri Chaitanya Educational Committee 2015 TIOL 1175 CESTAT – BANGALORE has observed as follows:

“78. The main contention of the learned Advocate for the appellants is that the Appellant Society through their own junior colleges and the junior colleges of other societies, under its management, imparts education to the students for intermediate 11th and 12th Standards, like any other school/college providing education for 11th and 12th Standard, anywhere in the country, each of the colleges, either belonging to the Appellant Society or belong to other societies and run by the Appellant Society are recognized by the Andhra Pradesh Intermediate Board and are monitored and regulated by the Board. The Appellant Society introduced optional stream of courses in the year 1991, much before service tax was introduced on “Commercial Training or Coaching Centre” in 2003, for students undergoing intermediate courses in their colleges. These optional courses are offered to students securing high percentage of marks in intermediate examination and to enable the students to appear and score high marks in various entrance examinations such as IIT, JEE,

Engineering and Medical Common Entrance Test (EAMCET), etc. The contention of the learned Advocate is that as per the Section 65(27), an institute or establishment, which provides training or coaching for imparting skill, knowledge or lessons is a “Commercial Training or Coaching Centre”. But, the institute or establishment, provides training or coaching or imparting skill, knowledge or lessons and issues a certificate/educational qualification recognized by law, would be excluded from the levy of Service Tax. In the present case, the Appellant Society provides the coaching classes to the students, which is integral part of the intermediate course conducted by the college and the certificates issued by BIE (Board of Intermediate Education), Government of Andhra Pradesh and duly signed and endorsed by the Principal of the respective college, are recognized by law. So, it is not covered under the definition.

79. For the purpose of proper appreciation of the case, the definition of “Commercial Training or Coaching Centre” under Section 65(27) of Finance Act, 1994 is reproduced below :-

“ ‘Commercial training or coaching centre’ means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.”

80. The definition of “Commercial Training or Coaching Centre” have both inclusive and exclusive part, i.e., it may include certain things and exclude others. The word “any”, e.g., institute or establishment providing Commercial Training or Coaching in the main part of the definition, is a word having very wide meaning. It is noted that the definition also categorically includes “coaching or tutorial classes”. The word “includes” in the definition makes it clear that the intention was to make it more extensive. In this perspective, the exclusion part of the definition suggests a very limited purpose to “pre-school coaching and training centre” and any institute or establishment, which issues any certificate or diploma recognized by law. The “coaching or tutorial classes” mentioned in the inclusive part of the definition and it cannot be covered in the exclusive portion of the definition. While interpreting the definition of “Commercial Training or Coaching Centre”, the exclusion part must be strictly construed, what is being included in the definition cannot be excluded, unless it is specifically mentioned. In the present case, according to the appellant, they were offering coaching classes to the students of intermediate standard of their colleges and other colleges for appearing joint entrance examination of IIT, JEE, etc. In my considered view, when “coaching classes” have categorically included in the definition, then, it cannot be excluded by stretching the meaning of exclusion clause of the definition.

81. The learned Advocate strongly relied upon the Board’s Circular No. 59/8/2003-S.T., dated 26-6-2003, whether Service Tax is applicable on institute or establishment providing commercial coaching in addition to the recognized degree courses. It is clarified that some institutes like colleges, apart from imparting education for obtaining recognized degree/diploma/certificate, also impart training for competitive examinations, various entrance tests. Such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of “Commercial Training or Coaching” institute. Thus, even if such institutes or establishment provides training for competitive examinations, etc., such services rendered would be outside the scope of Service Tax. In my view, while deciding the words “any institute or establishment which issues certificate or diploma or degree or any educational qualification recognized by law”, ordinarily, would not include coaching or tutorial classes. After close reading of Board Circular and the definition, it appears that the institute or establishment issuing certificate, recognized by the law, is also conducting coaching classes,

would be outside of the purview of the levy of Service Tax. The learned Advocate stated that in the present case, the coaching classes are integrally connected with the intermediate courses conducted by the colleges. The contention of the learned Advocate that the certificate issued by Andhra Pradesh Board is endorsed by the Principal of the college, which would cover the exclusion part of the definition. In this context, it is required to examine the facts of the case as to whether the coaching classes offered by the Appellant Society are integrally connected with the intermediate courses.

82. The learned Member (Technical) in his order had elaborately discussed the facts and held that the courses have no nexus with intermediate courses of the colleges. The adjudicating authority had also given detailed findings on this issue as the coaching classes are conducted in different places (campuses and special fields). These facts were admitted by the appellant in their statements. The relevant portions of the findings of the adjudicating authority are reproduced below :-

“58. In his statement dated 2-3-2006 given before the Superintendent of Central Excise under Section 14 ibid, Sri Yarlaga Sasi Kumar, Campus Incharge of Sri Chaitanya EAMCET Coaching Centre, Sri Vyshnavi Bhavan, Gurunanaknagar Colony, had stated that “intensive coaching for EAMCET would be given in their premises; that the duration of the coaching is 8 to 10 months, that depending on the performance of the students, fees from Rs. 20,000/- to 50,000/- would be collected from each student; that the collection of fees and the details would be done at the Central Office and that in this premises, Attendance Register and records connecting to education were only maintained.

59. In the Statement dated 13-3-2006 given before the Superintendent of Central Excise under Section 14 of the Central Excise Act, 1944, Dr. B.S. Rao, President, Sri Chaitanya Educational Committee had stated that “their accounting was centralized at Vijayawada for all the branches that in every branch, Principal to look into academic and administration was posted; that in the Head Office at Vijayawada, Dr. B. Jhansi Laxmi and himself would look after the general administration; that some students were day students and some stay as boarders; that the courses offered were Bi.P.C., M.P.C., M.E.C. both English and Telugu media; that *the boarding facilities were only for M.P.C. and Bi.P.C.* and Boarding facilities were given both for intermediate and coaching students of competitive examinations; that for the students who score more than 90% in 10th class, there was no fees at all, while some concession would be given for the students who got more than 80% in 10th class; that for competitive exams also, the students were offered free seats who got a rank of below 2500 in the previous examination; that there were some more concessions, like 75% concession for the students who got a rank in between 2500-3000, 50% concession who got a rank between 3000-4000 and 25% fee concession for the students who got 4000-5000.” *From the above, it is evident that the concessions, benefits were given by Sri Chaitanya Educational Committee to the students on the basis of merit but not on the basis of economic conditions of the students.*”

83. The students appear for the intermediate examinations under the hall ticket issued by the respective colleges and the students after passing examination, are awarded a certificate which issued by Intermediate Board Education duly endorsing stamp of respective college. However, the students of said colleges underwent coaching in different campus of the appellant on payment of fee ranging from Rs. 8,000.00 to Rs. 75,000.00 which was accepted by Shri K.V. Subba Rao, Accounts Manager of the appellant in his statement dated 28-2-2006. He also confirmed that the amount was collected from the different students of different colleges who underwent coaching of JE-IIT, EAMCET, etc., in different branches of the Appellant Society situated in Andhra Pradesh and other places of India. It is clearly evident from the facts of the case that the coaching classes were conducted in different campuses, separate fees and totally independent and had no nexus with the intermediate courses of the colleges. So, I agree with the finding of the learned Member (Technical) that Service Tax is leviable on the Appellant Society on such coaching classes.

84. The next issue is whether the extended period of limitation is invokable as held by learned Member (Technical) or not invokable as held by learned Member (Judicial). Learned Member (Technical) observed that the appellants were aware of their tax liability as they have registered in Kota, Rajasthan and paid Service Tax. There is no logic or rational on different stand taken by the appellant in Kota and Andhra Pradesh. The appellants are not entitled to a *bona fide* belief that they are not liable to pay Service Tax.”

We find that in view of the decision of Tribunal in case of Shri Chaitanya Educational Committee (supra) the appellants are liable to pay service tax on the service provided by them as the appellants are not falling under any category excluded from the definition of Commercial Coaching and Training.

6. Relying on the aforesaid decision, we hold that the demand of duty, interest and penalty under Section 77 and 78 are upheld. The appeal is consequentially dismissed.

(Pronounced in the open court on 21.11.2019)

(JUSTICE DILIP GUPTA)
HON'BLE (PRESIDENT)

(RAJU)
MEMBER (TECHNICAL)

Neha